

Appl. No. 10/086,765
Amendment dated January 20, 2004
Reply to Office Action of December 18, 2003

REMARKS

Applicants have received and reviewed an Office Action dated August 18, 2003. By way of response, Applicants have canceled claims 1-20, 22, 28, 34 and 40, amended claims 21, 23, 25-26, 29, 32, 35, 37-38, 41, 48 and 49, and added new claims 50-70. No new matter is presented. Claims 21, 23-27, 29-33, 35-39 and 41-70 are pending. Applicants submit that the pending claims are supported by the specification.

The newly presented claims relate to compositions including an antimicrobial solvent and peroxyoctanoic acid.

For the reasons given below, Applicants submit that the amended claims are in condition for allowance and notification to that effect is earnestly solicited.

Petition for Extension of Time

It is noted that a three-month petition for extension of time is necessary to provide for the timeliness of the response. A request for such an extension is made extending the time for response from November 18, 2003 to January 18, 2003, which was a Sunday extending the time for response to Monday, January 19, 2003, which was a holiday (Martin Luther King, Jr. Day) extending the time for response to Tuesday, January 20, 2003.

Rejection of Claims Under § 112, Second Paragraph

The Examiner rejected claims 48 and 49 under 35 U.S.C. § 112, second paragraph. Applicants respectfully traverse this rejection.

Applicants believe that the Examiner objected to the recitation in claims 48 and 49 of the term substantially. Amended claims 48 and 49 do not include this term.

Accordingly, it is believed that the amended claims fully comply with § 112, second paragraph, and withdrawal of this rejection is respectfully requested.

Rejection of Claims Under § 103

The Examiner rejected claims 21, 22, 25, 28-34, 37 and 40-49 under 35 U.S.C. § 103(a) as obvious over Ajoku et al. (WO 00/04777) in view of JP 06219911. Applicants respectfully traverse this rejection.

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The Office Action rejected the claims over the combination of two references that were linked by their reference to slime control. The first reference discloses antimicrobial synergy between peroxyacetic acid and a phosphonium chloride. The second reference discloses a composition containing an antimicrobial agent and a dibasic acid ester. The first reference discloses measuring antimicrobial activity that manifests itself over 24 hours at 37 °C. A combination of these two references results in a composition requiring peroxyacetic acid, phosphonium chloride, a third antimicrobial agent, and a dibasic acid ester for killing slime in 24 hours. The references cited in the rejection do not even mention killing spores in as little as 10 seconds at 60 °C.

In contrast, the present claims relate to combinations of specifically named antimicrobial solvents and antimicrobial agents in compositions effective for reducing the population of bacteria or spores in 10 seconds at 60 °C. The combinations of specifically named antimicrobial solvents and antimicrobial agents provide the activity that can reduce the population of bacteria or spores in 10 seconds at 60 °C. The references cited in the rejections neither teach nor suggest the present combinations of specifically named antimicrobial solvents and antimicrobial agents nor concentrations or combinations with the ability to kill spores in 10 seconds at 60 °C. Therefore, the references cited in the rejection neither teach nor suggest the presently claimed invention.

Accordingly, based on the foregoing differences, it is submitted that the references cited in the prior art rejections neither teach nor suggest the presently claimed compositions, and withdrawal of this rejection is respectfully requested.

Restriction and Species Election Requirements

Applicants acknowledge and appreciate that the Examiner has reduced the restriction requirement to split the claims into two groups. Applicants appreciate that the Examiner has placed all of the composition claims in and examined Group II.

Applicants believe that this Amendment and Response presents generic claims that are allowable. Should the Examiner retain the species election requirement, Applicants respectfully elect diester dicarboxylate as antimicrobial solvent and C₂ to C₁₂ peroxycarboxylic acid as

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antimicrobial agent. These species can be found in the present specification at least at pages 26-29 and 32-34, respectively.

Summary

In summary, Applicants submit that each of claims 21, 23-27, 29-33, 35-39 and 41-70 are in condition for allowance. The Examiner is invited to contact Applicant's undersigned representative at the telephone number listed below, if the Examiner believes that doing so will expedite prosecution of this application.

Respectfully submitted,

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Dated: Jan 20, 2004

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